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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ARMAND ION,

16 Defendant.

No. CR 8:22-CR-00145-MWF

GOVERNMENT'S SENTENCING POSITION

Hearing Date: April 17, 2024

Location: Courtroom of the  
Hon. Michael W.  
Fitzgerald

17  
18 Plaintiff United States of America, by and through its counsel  
19 of record, the United States Attorney for the Central District of  
20 California and Assistant United States Attorney Alix McKenna, hereby  
21 files its sentencing position.

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This sentencing position is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: April 4, 2024

Respectfully submitted,

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/s/

ALIX MCKENNA  
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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

On February 7, 2024, defendant Armand Ion ("defendant") pled guilty to bank fraud, in violation of 18 U.S.C. § 1344(2), and aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1). (Presentence Investigation Report ("PSR") ¶ 1.) The case arose out of a scheme in which defendant conspired with others to install cameras and skimming devices on automated teller machines ("ATM"s) to steal customer information, and then use counterfeit cards embedded with the customer information. (PSR ¶ 16-18). Defendant personally installed multiple devices. (PSR ¶ 20-23). However, he was not the mastermind of the scheme, did not direct others, and played a smaller role in a larger criminal plan. (PSR ¶ 54). Thus, the government believes that a 2-level decrease is appropriate under U.S.S.G. §3B1.2(b). Probation found that defendant's total offense level is 18 and that his Guideline imprisonment range is 27 to 33 months, plus 24 months consecutive for his identity theft conviction (PSR ¶ 61, 112). The government concurs and respectfully requests that the Court sentence defendant to: (1) a term of 51 months imprisonment, consisting of 27 months for the bank fraud, and a consecutive 24 months for the aggravated identity theft (2) a 3-year term of supervised release with the terms and conditions recommended by the USPO, (3) a mandatory special assessment of \$100, and (4) restitution in the amount to be determined at a hearing.

**II. STATEMENT OF FACTS**

Beginning no later than August 4, 2021, and continuing through at least September 8, 2022, defendant conspired with Gheorghe Dumitru and others to execute a bank fraud scheme. (PSR ¶ 13). Dumitru held

1 a leadership role over his coconspirators, including defendant. (PSR  
2 ¶ 14).

3 Over the course of his conspiracy, defendant and his co-  
4 conspirators installed skimming devices, which record and store data  
5 on ATMs. (PSR ¶ 14). Cameras installed with the skimming devices  
6 captured keypad entries, including cardholders' personal  
7 identification numbers. (Id.) The information recovered from or  
8 transmitted by a skimming device was then encoded onto counterfeit  
9 cards and used alone or in conjunction with an authentication  
10 feature, such as a PIN, to incur charges or withdraw funds from a  
11 victim cardholder's bank, credit card, or EBT account without the  
12 victim's consent, knowledge, or authorization. (PSR ¶ 17).

13 Specifically, on August 4, 2021, defendant and co-conspirators  
14 installed a skimming device on a Bank of America ATM located in  
15 Irvine, California, along with a device equipped with a camera. (PSR  
16 ¶ 20). On September 1, 2021, defendant and a co-conspirator  
17 attempted to install a skimming device at a Bank of America ATM  
18 located in Moorpark, California. (PSR ¶ 21). On September 2, 2021,  
19 defendant used a counterfeit card encoded with victim J.S.'s Bank of  
20 America debit card to make an unauthorized withdrawal of  
21 approximately \$300 in cash from a Bank of America ATM located in  
22 Santa Ana, California. (PSR ¶ 22). Defendant also used a  
23 counterfeit card encoded with debit card information belonging to  
24 victim R.A., to check the balance in victim R.A.'s account without  
25 victim R.A.'s authorization. (PSR ¶ 23). On May 14, 2022, defendant  
26 and co-conspirators installed an ATM skimming device at a point-of-  
27 sale terminal in Madera, California. (PSR ¶ 24).

Between August 4, 2021, and September 13, 2021, defendant and co-conspirators made balance inquiries or withdrawals on 277 unique cards. (PSR ¶ 26). During this time, defendant and co-conspirators caused an actual loss of \$120,120 from 109 unique cards belonging to more than 10 victims. (PSR ¶ 26). However, other coconspirators are directly responsible for the bulk of the loss.

During a search of his home in September 2022, agents recovered seven skimming devices, a card encoding device, and twenty debit-type gift cards. (PSR ¶ 26). In addition, between July 18, 2022, and September 3, 2022, Ion made 1,516 calls to EBT card phone lines for eight different states. (PSR ¶ 27).

### III. GUIDELINES CALCULATIONS

#### A. Offense Level

In the PSR, the USPO calculated the base offense level for defendant's crime as 7 under U.S.S.G. § 2B1.1(a)(1). (PSR ¶ 38.) Probation found that a 12-level enhancement for amount of loss should be applied under U.S.S.G. § 2B1.1(b)(1)(G). (PSR ¶ 42.) Further, probation found that a two-level increase should apply under U.S.S.G. § 2B1.1(b)(2)(A)(i) because the offense involves more than 10 victims. (PSR ¶ 45.) Probation applied an additional two-level enhancement due to the sophistication of the crime, under U.S.S.G. § 2B1.1(b)(10), and another two levels for possession of device making equipment and authentication features under U.S.S.G. § 2B1.1(b)(11). (PSR ¶ 47-49.) Under 18 U.S.C. § 1028(d)(1), a pin number is an authentication feature. (18 U.S.C. § 1028(d)(1), PSR ¶ 37.) The statute provides:

**the term "authentication feature" means any** hologram, watermark, certification, symbol, **code, image, sequence of numbers or letters, or other feature** that either individually

1 or in combination with another feature is **used by the issuing**  
2 **authority on an identification document**, document-making  
3 **implement, or means of identification to determine if the**  
4 **document is counterfeit, altered, or otherwise falsified;**

18 U.S.C. § 1028(d)(1).

5 Probation also found that a two-level reduction should apply for  
6 being a minor participant under U.S.S.G. § 3B1.2(b). Lastly,  
7 probation subtracted three levels for acceptance of responsibility  
8 and an additional two levels because defendant is a zero-point  
9 offender under USSG 4C1.1 for a total offense level of 18. (PSR ¶ 54,  
10 57-58, 60-61.)

11 The government concurs with probation's analysis.

#### 12 **B. Criminal History and Guidelines Range**

13 Probation found that defendant is a zero-point offender. (PSR ¶  
14 60). While defendant has a foreign criminal record, under U.S.S.G.  
15 § 4A1.2(h), sentences resulting from foreign convictions are not  
16 counted. (PSR ¶ 66). Thus, the government concurs.

### 17 **IV. ARGUMENT**

#### 18 **A. A Custodial Sentence of 51 Months Is Sufficient but Not** 19 **Greater Than Necessary**

20 The government respectfully recommends that the Court impose a  
21 low-end sentence of 27 months' imprisonment for defendant's bank  
22 fraud conviction, followed by a mandatory consecutive sentence of 24  
23 months for his aggravated identity theft conviction for a total  
24 imprisonment period of 51 months, a 3-year period of supervised  
25 release, a mandatory special assessment of \$100, and restitution.  
26 The government does not recommend that a fine be imposed due to  
27 defendant's likely inability to pay. This sentence is sufficient,  
28

1 but not greater than necessary, to comply with the purposes  
2 enumerated in 18 U.S.C. § 3553(a)(2) for the offense.

3 1. Section 3553(a)(1)

4 Section § 3553(a)(1) directs the court to consider the "nature  
5 and circumstances of the offense and the history and characteristics  
6 of the defendant," when selecting an appropriate sentence. 18 U.S.C.  
7 § 3553(a)(1). Here, defendant was a minor participant in a larger  
8 criminal conspiracy, and a sentence of 51 months would adequately  
9 account for his role in the offense.

10 2. Section 3553(a)(2) factors

11 Section 3583(a)(2) lists the purposes of a punitive sentence and  
12 directs the court to impose a sentence that is sufficient but not  
13 greater than necessary to comply with those purposes: "(A) to  
14 reflect the seriousness of the offense, to promote respect for the  
15 law, and to provide just punishment for the offense; (B) to afford  
16 adequate deterrence to criminal conduct; (C) to protect the public  
17 from further crimes of the defendant; and (D) to provide the  
18 defendant with needed educational and vocational training, medical  
19 care, or other correctional treatment in the most effective manner."  
20 18 U.S.C. § 3553(a)(2). A custodial sentence of 51 months is  
21 sufficient, but not greater than necessary to satisfy at least the  
22 first three of these purposes.

23 a. *A 51-Month Sentence Would Reflect the Seriousness*  
24 *of the Offense, Promote Respect for the Law, and*  
*Constitute a Just Punishment*

25 First, a 51-month sentence would reflect the seriousness of the  
26 crime, promote respect for the law, and provide just punishment for  
27 the offense. Defendant installed skimming devices and accessed  
28 civilians' financial information without consent. However, he was

1 not the leader of the conspiracy and did not direct the actions of  
2 others. A 51-month sentence would constitute a just punishment.

3 *b. A 51-Month Sentence Would Deter Future Criminal*  
4 *Conduct*

5 Second, a 51-month sentence would deter future criminal conduct.  
6 Such a sentence would exceed any of the sentences that defendant  
7 received in his foreign criminal cases. A prison term of over four  
8 years would send a strong message and deter defendant from committing  
9 future crimes in the United States.

10 *c. A 51-Month Sentence Would Protect the Public from*  
11 *Future Crimes by the Defendant*

12 A 51-month sentence would adequately protect the public from  
13 future crimes by defendant.

14 **V. RESTITUTION**

15 18 U.S.C. § 3663 prescribes mandatory restitution for a crime  
16 where an identifiable victim suffers a pecuniary loss. 18 U.S.C.A. §  
17 3663A. Further, 18 U.S.C. § 3663 permits a court to order a  
18 defendant to pay restitution to a victim in cases where such an order  
19 is not mandated by law. 18 U.S.C. § 3663A. The United States  
20 requests that a restitution hearing be set 60-90 days after the  
21 sentencing, under 18 U.S.C. § 3556(d)(5), in order to fully account  
22 for any and all victim restitution requests.

23 **VI. CONCLUSION**

24 For the foregoing reasons, the government respectfully requests  
25 that this Court sentence defendant to: (1) a total term of 51 months  
26 imprisonment; (2) a 3-year term of supervised release with the terms  
27 and conditions recommended by the USPO; and (3) a mandatory special  
28 assessment of \$100, and restitution.